DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Docket No. 090309298-9299-0 1

Notice: American Recovery and Reinvestment Act of 2009 Broadband Initiatives

AGENCIES: National Telecommunications and Information Administration, U.S. Department of Commerce, Rural Utilities Service, U.S. Department of Agriculture.

Executive Summary

I am filing these comments on behalf of the Virginia Internet Service Providers Alliance (VISPA). VISPA was founded in 1995 by several smaller ISPs who were delivering Internet in rural areas of Virginia in the early 90s. Passage of the Telecommunication Act in 1996 encouraged small service providers in our ability to deliver broadband to rural areas. These hopes were fueled by our belief that we would have fair and easy access to networks, and that the playing field would be leveled. We believed strongly that increased competition would speed up deployment of broadband. Along with the burst of the communication bubble in the late 90s came a never-ending effort by the incumbents to kill the competition. Our organization has been reduced to a few smaller providers who against all odds have managed to stay in business to fight the cause of delivering high speed Internet services in rural Virginia. Our surviving members share the following attributes which make us unique in this environment:

- We have deep-rooted ties to our respective local communities.
- We are technology savvy.
- We provide local jobs.
- We know how to design, operate and maintain efficient networks.
- We know how to stretch every dollar to run a business.
- We know what our communities need.
- We provide unique services.
- Often we are first to deploy new, more efficient technologies.
- We know how to adjust to market conditions quickly.
- We have a long history in this business.
- We have delivered high quality services to small markets that were initially ignored by incumbents.

Over the years we have seen many changes in this industry. Most of the changes were in favor of large incumbents as they were promising delivery of broadband services to every home and business in America. Their heavy lobbying to remove competition finally succeeded in 2003. Since then, there is almost zero inter modal competition across the country, and to say broadband deployment is inadequate is an understatement. We are seeing statistics that show the US slipping further down the scale of developed nations in broadband deployment.

There is strong evidence in countries such as Japan and Korea, with the largest deployment of broadband services in the world, that adoption and quick proliferation of such services directly relates to changes in rules governing their telecommunication industry. In Japan, increased competition and reduced cost has fueled the growth of service providers and their markets. According to Japanese ministry of telecommunications, in 1997 there were 4796 competitive telecom carriers. In February of 2008, Japan had 14441 competitive telecom carriers. As of March 2007, 95% of the Japanese population had access to broadband services and super high

speed service (FTTH) was available in 84% of the market. Their target is to have 100% coverage in broadband and 90% coverage in FTTH by 2010, only a year from now! Over 68% of these lines were provided by competitive telecom carriers.

We are not aware of any similar statistics for the US for the same period. For the period from 2000 through 2009, we are certainly aware of the disappearance of competition, market shrinkage, and limited availability of broadband services to US businesses and population, as evidenced in public hearings held from March 16, through March 24th by NTIA.

We all realize how crucial broadband is for economic development, commerce and global competition. As important as the stimulus money is for creation of jobs, we believe that far more economic benefits will be realized if we create a truly open competitive telecommunications market in the US. In the 21st century, we are witnessing a shift from traditional networks to all IP based networks. As we are experiencing this shift, we need to recognize that the rules regulating this industry are outdated and need to be adjusted for the 21st century realities.

One of the goals of the act is to establish a National Broadband Policy. In order to establish such a policy we need to have a continuing open and frank discussion of regulations in our industry. We need to:

- review the Interconnection Policy,
- review the Universal Service System,
- review the Tariff Policy,
- review the Net Neutrality Policy, and
- promote facilities based competition.

We believe that only the increased competition of truly open access networks and a clear national broadband policy free of political influence will propel deployment of broadband throughout the US. This process should be continuing one. There will be many issues which will need to be addressed as the networks develop. We thank you for the opportunity to have our voices heard in this important matter.

Sincerely,

Dusan Janjic
President
VISPA
30 Crossing Lane
Suite 206
Lexington, VA 24450

Who is Eligible?

We believe that the act establishes criteria on eligibility as quoted:

"(e) To be eligible for a grant under the program, an applicant shall—

(1) (A) be a State or political subdivision thereof, the District of Columbia, a territory or possession of the United States,an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)) or native Hawaiian organization;

(B) a nonprofit—

(i) foundation,

(ii) corporation,

(iii) institution, or

(iv) association; or

(C) any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest. In establishing such rule, the Assistant Secretary shall to the extent practicable promote the purposes of this section in a technologically neutral manner".

To this we will add one more critically important requirement:

To be eligible for a grant under the program, the applicant shall build networks which are open and accessible for all lawful purposes, make capacity available on a wholesale level to competing retail service providers, and adhere to the principals of FCC Broadband policy statement FCC-05-15 adopted on August 5, 2005.

Definition of Unserved and Underserved areas

If we look at the countries with the highest rate of penetration and adoption of broadband in the world ─ such as Japan ─ it is clear that the average price of 1 Mbps is directly related to adoption of broadband. For example, according to the Japanese ministry of telecommunications, the average price of 100 Kbps in Japan in 2007 was $ 0.07 compared to the average price in the US of over $ 1.00 for the same speed.

Based on this premise, we propose an approach in which the price of available symmetrical bandwidth is directly related to the definition of an unserved and underserved area. Therefore:

Unserved:
Is any area in which retail customers can obtain only a dial up or satellite connection to the Internet.

Underserved:
Is any area in which retail cost of 1 Mbps is equal to or greater then $10.

Definition of Broadband:

Title VI section 2 of the act calls for the development of a National Broadband Plan as quoted:

"The national broadband plan required by this section shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal".

We believe that such a plan should go beyond the definition of broadband currently adopted by the FCC. To draw on the suggestions of *Blueprint for Big Broadband* by Educase:

"For these reasons, EDUCAUSE proposes the creation of a new federal Universal Broadband Fund (UBF) that, together with matching funds from the states and the private and/or public sector, should be used to build open, big broadband networks of at least 100 Mbps (scalable upwards to 1 Gbps) to every home and business by 2012."

Toward these goals, we propose an ambitious definition of broadband. The broadband should be defined as a symmetrical service capable of transmission speeds of 100Mbps. If we follow our logic that cost is the determining factor in adoption, we should look at some of our "highly deployed markets" and the cost/Mbps in those markets. In some areas of the country it is possible to obtain 10 Mbps for $1.00. So the goal of this program should be to reduce the cost of Mbps and provide affordable bandwidth to entire country.

Non discrimination and Interconnection Obligations

This section and how it is defined is probably the single most important consideration for the success of this program and in development of a national broadband policy. Adoption and delivery of broadband through the US should be viewed as being as essential as electricity. Affordable broadband delivers numerous benefits to the communities, medical providers, retail customers, public entities such as local governments and law enforcement agencies. It provides the foundation for economic development, collaboration and innovation. In order for programs to achieve the goals of the act, fairness and enforceable rules are crucial. The program will not succeed if, for example, we create isolated networks which are too expensive to operate because backhaul is prohibitively expensive. The program objectives should look at the role of cost and affordability as they relate to penetration and adoption of broadband. Without open networks, numerous providers will be unable to deliver services. Without the services we will only have empty "pipes".

Following our logic that the definition of "underserved" be directly tied to cost per Mbps, we propose that wholesale transport access to the networks built by the grant funds should cost no more than $1 per Mbps. Since high speed networks will inevitably produce heavy users, we also propose developing a unit-based pricing structure. Every other utility in the world charges consumers based on level of consumption, and broadband shouldn't be any different. The more data the user consumes (in this case user is both the end user as well as is the ISP), the more they should pay for it. Technologically, there is no difficulty in setting up a unit-based payment

system. Of course the magic is to set up a fair pricing model. In the end, the heavy users,(for example, Peer to Peer network users) should pay for their heavy use, which will solve many current debates over issues such as network neutrality, copyright abuse, piracy etc. Market forces will determine what the end user is willing to pay.

Selection Criteria:

We believe that priorities should be given to applicants who demonstrate the following:

- create the most sustainable jobs,
- build open access networks based on principals outlined above,
- have the broadest community support,
- that build out will bring affordable "last mile" and "middle mile" to users,
- a sustainable business model, and
- the best solution for community anchor tenants such as libraries, community colleges, public and safety agencies etc.

Role of States:

Some proposals may transcend more then one state, and some proposals may address localities about which the state has inadequate information. In our opinion, the states should have a very limited role. Proposals should be judged on their own merits with a standard of meeting the goals of the grant.

We also believe that states should be required to examine pricing structures and existing tariffs, because those costs are one of the largest obstacles to broadband deployment. Without clear rules and understandable pricing elements for potential providers, this program will fail.